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Inclusion of minorities in Kosovo through institutional recognition of linguistic rights

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SUMMARY: To what extent a well-designed legislation and policy, low thresholds for language recognition and institutionally established mechanism aimed at promoting and protecting linguistic rights contribute to the integration of minorities in post-conflict societies? Language is an essential element of cultural identity, enabling groups and individuals to freely express themselves, gain full access to public services and to allow their equal participation in public life. There are many dimensions upon which language is studied in relation to integration, while there are also different areas where exercise of this fundamental right is measured, such as education, political participation, protection of cultural identity and access to services etc. All of them are equally important and should be taken into consideration when developing a national policy framework. In this article, I elaborate on legal and policy framework established in Kosovo after 2000, outline the application of linguistic rights provisions at central and local level, elaborate on the concepts of official languages, languages in official use and the thresholds applied for recognition of a language. In addition, I will elaborate on institutional mechanisms foreseen to protect and promote linguistic rights in Kosovo. This institutional design policy and mechanisms created in Kosovo are unique in itself, while also throughout the Balkans and further. Finally, I shall conclude by evaluating whether legal and policy standards applied have contributed to the integration of minorities in Kosovo's public life and its long-lasting effects in ensuring stability and preventing tensions between different minorities.

KEY WORDS:
linguistic
rights, Kosovo,
minorities,
language policies,
bilingualism,
multilingualism

Introduction

Advanced legal guarantees and positive discrimination clauses on the protection of linguistic rights are enshrined in the legal system of Kosovo. Bilingualism, as a principle is proclaimed in the Constitution of Kosovo, which recognized both the Albanian and Serbian languages as official, regardless of the fact that adopting such measures transcends the thresholds of minority (communities) representation, as determined in European and international standards on ethnic community guarantees. Bilingualism is a principle applied at both government levels, central and local, and mandates those institutions to ensure equal use and status of both official languages.

In addition to the main constitutional guarantees, Kosovo has developed special laws that protect language rights and languages in official use. These laws are considered laws of *vital interests*¹ and their amendment needs the approval by a double majority vote of the Kosovo Assembly. Consequently, at the municipal level - Kosovo has developed multilingual guarantees that permit the recognition of other languages (such as Turkish, Bosnian, Romani etc.) the status of languages in official use. Up to date, this principle is applied in several municipalities and has enabled 'numerically smaller minorities' the right to official recognition of their language or entitling them on the recognition of a language as a language in official use.

Besides extensive constitutional and legal guarantees that are foreseen within Kosovo legislation, a few policy initiatives led to the establishment of a number of institutions that are envisaged to protect and promote linguistic rights, at the central and local level. It is worth noting that the legal reform process of language policies was undertaken in 2010 in Kosovo and led to the creation of a new central level institution, namely, the Office of the Language Commissioner (*hereinafter* the Office) in 2012. The Office of the Language Commissioner is the first institution of its kind in the Balkans and beyond, while the Commissioner is mandated to protect linguistic rights and ensure the implementation of fundamental rights arising from such guarantees. Therefore, this paper will analyse the constitutional and legal guarantees regulating language policies in Kosovo, as well as offer theoretical and empirical discussions that aim to explain how bilingualism and multilingualism principles are applied in Kosovo. In addition to that, this paper will assess the relationship of constitutional guarantees and legal guarantees, analyse the

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1 Article 81.3, Constitution of the Republic of Kosovo, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702> (10.10.2017.)

institutional framework, and finally, evaluate the extent to which these guarantees have contributed to the integration of minorities in Kosovo.

International community and standards within the Kosovo legal system – *a historical background*

Initially, it must be emphasized that the constitutional and legal framework in Kosovo reflects almost a decade of international presence established in Kosovo after 1999 and the legislation drafted by the United Nations Administration in Kosovo (*hereinafter* UNMIK). International presence which was operationalized through UNMIK, created in the early 2000's the Kosovo's "Provisional Institutions of Self-Government". These institutions served as a basis for the design of institutional arrangements that in 2007 have been reflected in the Comprehensive Proposal for the Kosovo Status Settlement.² This document which was also known as the 'Ahtisaari Plan' highlights a number of key principles, notably measures, to guarantee equal enjoyment of fundamental rights and freedoms, including specific rights granted to non-majority communities and their members, in line with international standards.³ In addition, it should be noted that many of these requirements are today part of the Constitution of Kosovo, and thus guaranteed in constitutional law.

The 'Ahtisaari Plan' affirmed that Kosovo is rooted in the logic of a multi-ethnic society and that its institutions must ensure that all individuals are subject to its authority and receive equal treatment within its jurisdiction, regardless of ethnicity and language.⁴ The Plan stipulated that 'all persons in Kosovo are entitled to human rights and fundamental freedoms without discrimination of any kind on grounds, including language.'⁵ Further, it required that national symbols – including the Kosovo anthem, flag and seal reflect 'its multi-ethnic character'.⁶

Furthermore, beside elements which directly express the identity of all communities, the non-majority communities 'and their members are entitled to specific rights in addition to the rights and fundamental freedoms pertaining to all persons living in Kosovo'.⁷ Such rights are

2 <https://www.kuvendikosoves.org/common/docs/Comprehensive%20Proposal%20.pdf>

3 Comprehensive Proposal for the Kosovo Status Settlement, UN Doc.S/2007/168/Add. 1., art. 2 and 3.

4 Ibid, art. 1, paras. 1 and 2

5 Ibid, art. 2, paras. 2 and 3.

6 Ibid, art. 1, para. 7.

7 Ibid, art. 3, para. 1.

envisaged towards: expressing, maintaining and developing communities' culture, preserving the essential elements of their identity, including language, the right to use language and alphabet freely in private and public, the use of language in relation with central and municipal institutions, personal names registered in original form and in the script of the language, guaranteed access and special representation in broadcast media 'as well as programming in their language' and to established media in their language.⁸ With regard to education and language, the Plan stipulated that members of communities have the right to receive education 'in one of the official languages of Kosovo of their choice at all levels' and the right to receive 'pre-school, primary and secondary public education in their own language'.⁹

In this regard, the 'Ahtisaari Plan' does not only lay out a comprehensive framework for the protection of communities' language rights, but also elaborates a series of procedural safeguards to ensure minorities (communities' rights) protection. This implies that certain laws, impacting significantly the interests of non-majority communities, such as the 'laws implementing the rights of communities and their members' or the 'laws on use of languages' require a "double majority" vote for their adoption, amendment and/or repeal. A double majority is elaborated as the 'majority of the Assembly members present and voting - and the majority of the Assembly members present and voting belonging to parties, coalitions, citizens' initiatives and independent candidates having declared themselves to represent Communities'.¹⁰ Thus, communities related laws in Kosovo, including provisions of linguistic rights, fall under the most rigid legal provisions in terms of any potential proposed changes.

The 'Ahtisaari Plan' also stipulated that Kosovo authorities must perform their duties in accordance with the 'standards set forth in the Council of Europe Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages'.¹¹ These international documents¹² are today also envisaged

8 Comprehensive Proposal for the Kosovo Status Settlement, UN Doc.S/2007/168/Add. 1., Annex II, art. 3, para. 1, sub-para. a, d, e, f, g, h, i, j, k and l.

9 Ibid, art. 3, para. 1, sub-para. b and c.

10 Comprehensive Proposal for the Kosovo Status Settlement, UN Doc.S/2007/168/Add. 1., Annex I, art. 3, para. 7, sub-para c.

11 Comprehensive Proposal for the Kosovo Status Settlement, UN Doc.S/2007/168/Add. 1., Annex II, art. 2, para. 2.

12 The Ahtisaari Proposal foresaw binding clauses and direct applicability of the international instruments and agreements in Kosovo's legal and constitutional system. The Ahtisaari Proposal outlined that these documents will have a priority over all other laws and no amendments to the Constitution shall diminish these rights arising from

in the Constitution and are directly applicable in Kosovo. Hence, the 'Ahtisaari Plan' comprised a broad and comprehensive policy guideline for Kosovo in many aspects, including the use of languages (establishing bilingualism and multilingualism) and provisions of education in mother tongue at all levels. It is worth noting that the Ahtisaari envisaged also provisions on the establishment of legal and institutional mechanisms for the protection, promotion and enforcement of human rights as derived from these international instruments and agreements as well as the right for individuals claiming that the rights and freedoms granted to them under the Constitution have been violated by a public authority to introduce a claim to the Constitutional Court, following the exhaustion of all other remedies.

National framework

Prior to presentation of the arranged internal legal and policy framework in Kosovo, it's worth mentioning the minority figures (communities' figures) and percentages reflected for each community. According to the data provided by the census,¹³ the total Kosovo population amounts to 1,771.604. The largest ethnic group are Albanians, amounting to 92.9% of the total population. The second and third largest ethnic groups are Bosniaks (1.6%) and Serbs (1.5%). They are followed by Turks (1.1%), Ashkali (0.9%) and Egyptians (0.7%). Finally, Roma and Gorani make 0.5% and 0.6% of the total population. A remaining 0.1% defined themselves as belonging to other groups. Hence, non-Albanians make up to around 7% of the population. The census data for Serbs and Roma differ significantly from previous estimates, while there are smaller, but sometimes significant, discrepancies for other non-majority communities (ECMI, 2012). Thus, one could argue that percentages of minorities in Kosovo are relatively small and often considered disproportionate in terms of the level of rights granted, including the linguistic rights.

the following documents: 1.Universal Declaration of Human Rights; 2.European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols; 3.International Covenant on Civil and Political Rights and its Protocols; 4.Council of Europe Framework Convention for the Protection of National Minorities Convention on the Elimination of All Forms of Racial Discrimination; 5.Convention on the Elimination of all Forms of Discrimination Against Women; 6.Convention on the Rights of the Child; 7.Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment;

¹³ *Statistical Yearbook of the Republic of Kosovo* – 2016. Available at: <http://ask.rks-gov.net/media/2577/statistical-yearbook-2016-ang.pdf> (5.12.2017.); while data with regard to the particular communities' ethnicity are based on the *Kosovo Population and Housing Census 2011 Final Results – Main Data*, available at <http://ask.rks-gov.net>;

As outlined earlier, domestic legal framework incorporates provisions of the 'Athisaari Plan' and further defines policies for the protection and promotion of non-majority communities. Several international and regional instruments are directly applicable in Kosovo through its Constitution including the Council of Europe - Framework Convention for the Protection of National Minorities.¹⁴ Moreover, the Plan and later Constitution foresaw requirements for institutions to ensure that their measures be in full accordance with the 'the standards set forth in the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages'.¹⁵ In this line, we can argue that the Constitution 'constitutionalizes' a number of international agreements and instruments that aim to protect linguistic rights and freedoms, among others. To do this, it stipulates that human rights and fundamental freedoms guaranteed by the following international agreements and instruments are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions'.¹⁶ This overarching legacy over the domestic law as well as direct applicability strengthens the position of linguistic rights at the highest level of legal guarantees.

The Constitution broadly defines forms of inclusion of minorities' rights, specifically towards linguistic rights, by guarantees to "express, maintain and develop culture and preserve their language individually or in community".¹⁷ As corollary, members of the communities have the right to use their languages freely, orally and in written, in the private and public spheres.¹⁸ In addition, according to Constitution, direct and indirect discrimination based on linguistic ground is strictly prohibited, and the state shall take measures to protect and advance the rights of individuals and groups that might be subject to such discrimination.¹⁹

Moreover, the Constitution adopts the *principle of bilingualism* at the central level, by granting an equal status of Albanian and Serbian languages and ensuring the official status of both languages at the national level, regardless of the percentage that the Serb community

14 The Constitution of the Republic of Kosovo, art. 22.

15 Ibid, art. 58, para. 2.

16 Ibid, art. 22.

17 Ibid, Article 59(1).

18 Constitution of the Republic of Kosovo, Article 59(5), Law on the Protection and Promotion of Communities and their Members in the Republic of Kosovo [No. 03/L-047], Article 4.2.

19 Constitution of the Republic of Kosovo, Article 24.2, Law on the Protection and Promotion of Communities and their Members in the Republic of Kosovo [No. 03/L-047], Article 3.2, Anti-discrimination Law [No. 2004/3], Article 2 a).

constitutes in Kosovo. Simultaneously, we might say that the Constitution also adopts the *principle of multilingualism*, ensuring that Turkish, Bosnian, and Romani languages shall be accorded the status of an official language at the municipal level.²⁰ Lastly, the Constitution affirms that communities have the right to express, maintain and develop their culture and preserve the essential elements of their identity, including language, receive public education in one of the official languages of the Republic of Kosovo of their choice at all levels, receive education at the primary and secondary levels in their language, use their scripts and alphabet in relations with central and municipal institutions and have their names registered in the script of their language, have special access and proportional representation in their language, establish and maintain 'private media', and have the names of the streets, villages, and other national indications in their language, especially in the areas where they live.²¹

It is worth noting that in 2006, the provisional institutions of Kosovo adopted a specific law aiming at protecting and promoting linguistic rights within its territory, namely the Law on Use of Languages (*hereinafter* referred as 'the Law').²² This Law has been automatically enshrined as part of the laws of the vital interest at later phase of adoption of the Constitution in 2008. At the central level, the use of official languages - as a principle - applies in all institutions, providing for the Assembly of Kosovo to use official languages on equal basis in the work, debates and proceedings including through interpretation services.²³ Further, enabling the use of other community languages (Turkish, Bosnian, Romani) in the work, debates and proceedings of the Assembly through interpretation services and translation of documents²⁴, has allowed minority representatives to participate actively in the work of the latter. Furthermore, once adopted, all the laws are translated and published in Official Gazette of Kosovo in languages such as Turkish and Bosnian. Other pieces of legislation also provide extensive provisions of linguistic rights.²⁵

20 The Constitution of the Republic of Kosovo, art. 5, paragraphs 1 and 2.

21 Ibid, art. 59, paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11.

22 Law on Use of Languages, [No. 02/L-37], promulgated in 2006, available at: http://www.assembly-kosova.org/common/docs/ligjet/2006_02-L37_en.pdf;

23 Ibid, Article 5.1;

24 Ibid, Article 5.2;

25 Particular provisions are also found in the Law on the Protection and Promotion of Communities and their Members in the Republic of Kosovo, Law on Local-Self Government, Law on Education in the Municipalities of Kosovo and Law 04/L-32 on Pre-University Education in Kosovo.

While there is a number of other legislative acts adopted by the Kosovo Assembly aimed at preserving and developing all communities' identities, including extensive guarantees in the field of education in the two official languages at all levels, the following part focuses on legal provisions related to use of languages in relations with public bodies. Considering the interpretation of international legal instruments, namely the Framework Convention, it acknowledges the 'use of minority language by public authorities to be a legal obligation under traditional human rights approaches in situations where it was deemed unreasonable or unjustified to use official language exclusively, this involving discrimination on the basis of language'. Nevertheless, a minority's 'right' to have its language used by public authorities is not yet a well-entrenched entitlement in legal terms also at international level (De Varennes, 2005: 310).

Kosovo has also developed linguistic policies with regard to aspects of languages in education. The language and education policies in place have followed an institutional design strategy of recognition, decentralization, including the creation of new municipalities on ethnic basis and devolving competences over education, while establishing mechanisms for co-operation with the kin-state (the Republic of Serbia) of Kosovo's Serbs (Arraiza, 2014: 22). It is worth noting such a position, regardless of the fact that this is not the focus of our analysis. Language legislation and specifically the Law is considered broadly by international observers - as an advanced framework, while 'it remains one of the most ambitious in Europe'²⁶. Further, the provisions of the Law go even further as they include maintaining the full co-official status for the Serbian and Albanian languages throughout Kosovo's territory, despite the comparative low percentage of ethnic Serbs (approximately 5 per cent of the population).²⁷ Moreover, Turkish, Bosnian and Romani are official at the municipal level, if a five per cent demographic threshold is met.²⁸

26 Advisory Committee on The Framework Convention For The Protection Of National Minorities, Comments By The United Nations Interim Administration Mission In Kosovo (UNMIK) On The Third Opinion Of The Advisory Committee On The Implementation Of The Framework Convention For The Protection Of National Minorities In Kosovo, September, 2013, p.21; available at: http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#UNMIK_Kosovo

27 The reform was introduced in July 2006 through Assembly of Kosovo Law 02/L-37 on the Use of Languages, 27 July 2006. See UNMIK Regulation 2006/51 on the Promulgation of the Law on the Use of Languages adopted by the Assembly of Kosovo. Article 5, Constitution of the Republic of Kosovo; Art. 2(2), Assembly of Kosovo Law 02/L-37 on the Use of Languages.

28 Art. 5(2), Constitution of the Republic of Kosovo. Arts. 2(3) and 2(4), Republic of Kosovo Law on the Use of Languages.

Only a three per cent threshold is sufficient to make Turkish, Bosnian or Romani “in official use” in a municipality and activates a right to reply and use in public meetings (Arraiza, 2014: 22). These low thresholds led to some smaller minorities’ languages being granted an official language status at the municipal/local level. i.e.; Turkish is an official language in the municipalities of Prizren and Mamuşa/Mamushë/Mamuša. Users of this language have the same rights as users of the Albanian and the Serbian languages as the official languages of Kosovo. Alongside, in 2007 and 2008, the municipalities of Gjilan/Gnjilane, Mitrovicë/Mitrovica, Prishtinë/Priština and Vushtrri/Vučitrn recognized Turkish as a ‘language in official use’. Consequently, Bosnian language is an official language in the municipalities of Prizren, Dragash/Dragaš and Pejë/Peć and language in official use in Istog/Istok. Citizens in these municipalities can receive services and obtain documents in their language through individual requests. Further, the Law also recognizes ‘*traditionally spoken languages*’ by activating it for the community whose language has been traditionally spoken in a municipality. Members of the community that consider that their language fulfils the criteria to be an official language, or language in official use based on percentage or being traditionally spoken, can submit the request to local authorities.²⁹ Thus, in December 2014, Gračanica municipal assembly³⁰ amended the municipal regulation on the use of official languages recognizing Romani as a language in official use. Other areas where linguistic provisions apply concern the provisions on the display of institutions’ names, requiring that they are displayed in all official languages at central and local level. Specific provisions apply to local names, street names and other topographical indicators, in order to ensure that these “reflect and

29 Administrative Instruction no. 2011-02 on determination of procedures for implementation of the Law on Use of Languages, available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=7982>; According to Administrative Instruction, the request for recognition of traditionally spoken language may be carried out by the legal or natural person with the signature of at least ten persons of the community in question. The request must be presented to the municipality. The request shall be filed to the Mayor. The Mayor shall submit the request to the Community Committee for recommendations. Recommendations of the community committee shall be submitted to the Municipal Assembly for approval. The Mayor shall communicate the decision of the community not later than 60 days from the moment of receipt of the request for the admission of traditionally spoken language in municipality. If the decision of the Municipal Assembly is negative or if there is no official decision to communicate to the community after 60 days from the date of receipt of the official request, the communities may file the petition to the Commission of Languages within subsequent 30 days.

30 The Gračanicë/Gračanica municipal decision of 14.12.2014 on the recognition of the Romani language as language in official use, available at: <https://kk.rks-gov.net/gracanice/Municipality/Assembly/Regulations/Odluke-2014.aspx>;

are sensitive to the multi-ethnic and multi-linguistic character of the area at issue”.³¹

The broad interpretation of linguistic rights has led to a tremendous amount of work, in particular, for municipalities and municipal administration that are obliged to translate all documents and materials in official languages, regardless of the number of minorities which require a certain document or material. The official status of Serbian and Albanian language throughout Kosovo places considerable obligations also towards mono-ethnic municipalities³² in Kosovo, which are often faced with a challenge as to whether or not to translate all the materials in the official languages.

In addition, if compared with other countries' practices, then the thresholds that activate official use at the municipal level (for Turkish, Romani, and Bosnian languages) are low (5 and 3 per cent) in comparison i.e. with the neighbouring country – the Republic of North Macedonia, which holds the municipal threshold of 20 per cent. However, with the recent changes in government policies, the Republic of North Macedonia undertook a step further in clarifying the '20 per cent threshold' by adopting a specific piece of legislation.³³ This legislation allows a broader interpretation and application of language rights by ensuring that all central institutions, public agencies and other institutions, who perform official duties, by ensuring the official language aside the Macedonian language and its alphabet, ensure the official status of the language that is spoken by 20% of its citizens and its alphabet. Further, this legislation establishes mechanisms for promoting, protecting and equal implementation of the official languages.³⁴ To further support the comparison among the countries with language threshold in place, some additional examples can be taken. Although these examples may be

31 Constitution of the Republic of Kosovo, Article 59(9)

32 Examples of mono-ethnic municipalities are municipalities of Glogovac/Glogovac and Kacanik/Kaçanik, Malisheve/Malisevo, Junik/Junik, Partes/Partesh, and Hani i Elezit/Eles Han. Since the census was not held in Zvečan/Zvečan, Leposaviq/Leposavič, Zubin Potok and Mitrovicë e Veriut/Severna Mitrovica, the data does not include these four Serb-majority municipalities.

33 The Law on Use of Languages was approved on the 14th January 2019, and repeals the previous 'Law on use of languages for the citizens that constitute at least 20% of the Republic of Macedonia and entities of local self-government' no.101/08 and 100/11, available at: <https://apj.gov.mk/wp-content/uploads/2019/07/Ligji-per-zbatimin-e-gjuhes-1.pdf>;

34 Art 18, 19, 20 of the Law on use of Language of the Republic of North Macedonia, establishes the Agency for the Implementation of the Language that is spoken by at least 20% of the citizens of the Republic of North Macedonia' and the 'Inspectorate for the use of languages'. available at: <https://apj.gov.mk/wp-content/uploads/2019/07/Ligji-per-zbatimin-e-gjuhes-1.pdf>;

feasible in highly developed countries with generous minority language policies (e.g., the threshold in Finland for a municipality to be bilingual in Swedish and Finnish is eight per cent,³⁵ while Slovakia will reduce its 20 per cent threshold to 15 per cent in 2021), the same standard may be costly for an underdeveloped Kosovo municipality (Arraiza, 2014: 22). Acknowledging that this type of legislation cannot operate in a vacuum, the Advisory Committee of the Council of Europe has occasionally clarified that once such legislation is in place, authorities have further obligation to ensure that it is properly applied, and that sufficient resources are in place, including appropriate measures to recruit staff and provide language training (De Varennes, 2005: 314). Consequently, as in the case with Slovakia international mechanisms did intervene to clarify some of the international obligations. Such examples include the Opinion issued by the Venice Commission³⁶ on thresholds applied (the 20%), where the Commission found it to be problematic and incompatible with the international obligations while recommending revision of such policies. Nevertheless, the general observation would lead to evaluate that ensuring the respect of these linguistic rights in Kosovo (despite the low thresholds) has contributed substantially to the creation of higher trust in local and central institutions, and has increased the incentive for participation of communities in public life.³⁷ Consequently, if looked from political context, often there have been political criteria imposed at countries who aspire joining the European Union. Such criteria include a respect for human and minority rights, including language rights, thus, reminding Kosovo to these obligations.³⁸ These political as-

35 According to Art. 5(2), Finland Language Act (403/2003) '*a municipality is designated bilingual if the population includes both Finnish and Swedish speakers and the minority comprises at least eight percent of the population or at least 3,000 persons. A bilingual municipality is designated unilingual if the minority comprises less than 3,000 persons and its proportion has decreased below six percent.*' Available at <https://www.finlex.fi/en/laki/kaannokset/2003/en20030423.pdf>

36 Venice Commission, Opinion no.555/2009 on the Act on the state of language of the Slovak Republic, par.53, par. 57, page 12 and par. 136, p.26, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2010\)080-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2010)080-e)

37 Establishment of local-level communities' mechanisms such as communities committees, municipal offices for communities and returns, deputy mayor for communities and deputy chairperson of municipal assembly are some of the mechanisms raising language issues continuously, which leads us to assess that the awareness raising on language rights is increasing as well as becoming a crucial component of minorities' rights in Kosovo. For more, please refer to OSCE reports of 2009 and 2014 '*An Assessment of Local-level mechanisms for the protection and promotion of Communities' Rights and Interests in Kosovo*', available at: <http://www.osce.org/kosovo/120343?download=true> ; and the 2014 OSCE report: '*Municipal language compliance in Kosovo*', available at: <http://www.osce.org/kosovo/120010?download=true>;

38 The so-called Copenhagen criteria for EU accession - European Commission, Accession Criteria - Presidency Conclusions par. 7, point iii, 21-22 June 1993, available at: http://www.europarl.europa.eu/enlargement/ec/pdf/cop_en.pdf (05.05.2017.)

assessments have been reflected in a more precise form through Countries Progress Reports³⁹ issued annually by the European Union.

The ‘watchdog’ mechanism – Office of the Language Commissioner

Beside extensive legal guarantees, Kosovo has gone beyond in protection of linguistic rights, by establishing complaint and oversight mechanisms. One of those mechanisms that Law on Use of Languages envisaged in cases of a breach of linguistic rights is Language Commission. Such a Commission was set to ensure that members of communities have the right to complain if the equal status of the official languages was not or is not being recognized. This body envisaged by Law and established in 2007, failed to fulfil its mandate of overseeing implementation of the legislation and serving as a complaints mechanism. In 2011, it became apparent that the Language Commission was not able to preserve, promote and protect official languages and their equal status in Kosovo in the manner envisioned by the Law on the Use of Languages. One of the main reasons for this was attributed to the fact that the Language Commissioner was tasked to conduct its mandated activities without full-time staff and adequate resources. Thus, in November 2011 the Office of the Prime Minister established an inter-ministerial working group to reform the Language Commission and language policies in accordance with recommendations emanating from the latter.

Emanating from the findings of the inter-ministerial working group, in 2012 the Language Commissioner underwent reform and was replaced by the Office of the Language Commissioner (hereinafter the Office). The purpose of establishment of the Office is to preserve, promote and protect official languages and their equal status in the Republic of Kosovo, the official languages and languages in official use of municipalities, and to ensure the protection of the community languages, whose mother tongue is not an official language.⁴⁰ The Office has been reformed mainly based on the model of the office of Language Commissioner of Ireland while tailored also to local context.⁴¹ The Office is

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³⁹ As with the case of Kosovo, the challenges and issues regarding linguistic rights are reflected in the European Commission's Country Reports, i.e. in 2019, 2018, 2017 etc; available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-kosovo-report.pdf>.

⁴⁰ Regulation No.07/2012 on the Office of the Language Commissioner, preamble of the regulation;

⁴¹ The author has been part of the working group on establishing the Office and all related developments accompanying the reform process, including the exchange of best practices between the Kosovo institutions and Irish Language Commissioner.

independent in exercising its function, though it operates and is funded under the auspices of the Office of the Prime minister. While operationally it's organized as an independent agency, the office is pretty much reliant on government fund allocation, which in the future might question its objectiveness. Nevertheless, the Office has enough jurisdiction when it comes to the supervision of implementation of the law on use of languages. Such competencies extend to the entire territory.⁴² Jurisdiction of the Office applies to the use of languages by institutions of the Republic of Kosovo and other organizations and enterprises that carry out public functions and services.⁴³

In addition, there are two other supportive mechanisms that are established for the purpose of supporting the Office, namely the Language Policy Board (hereinafter the Board) and Language Policy Network (hereinafter the Network). The first mechanism - the Board, was established in 2012 and serves as a body that provides institutional support for the development and implementation of language policies in Kosovo. The Board is composed of twenty members representing institutions, service providers and linguistic communities.⁴⁴ The Board also selects and recommends appointment and dismissal of the Language Commissioner. On the other hand, the Network is composed of language focal points of institutions, enterprises and organizations that carry out public functions and services. Establishment of the Office required also appointment of a Language Commissioner. In January 2013 a Language Commissioner was appointed and from June 2013 the Office had recruited initially four staff with three additional positions fulfilled over the years. In the meantime, the Office of the Language Commissioner has launched its website, has developed an online complaint form, and has reported successful resolution by mediation a number of complaints.⁴⁵ In its initial functioning phase, and in the first two years of operation, the complaints received from the citizens and other parties had increased tremendously.⁴⁶ Further, there was a slight decrease in the

42 Regulation No.07/2012 on the Office of the Language Commissioner, article 16, paragraph 2

43 Regulation No.07/2012 on the Office of the Language Commissioner, article 16, paragraph 3

44 Regulation No.07/2012 on the Office of the Language Commissioner, article 7, paragraph 2

45 A report available in Albanian at <http://www.komisioneri-ks.org>; in Serbian at <http://www.poverenik-ks.org>;

46 The speech given by Language Commissioner of Kosovo (May 12, 2017) in a public conference on implementation of the Law on Use of Languages, organized by the Consultative Council for Communities in Pristina, Kosovo. According to statistic presented the Language Commissioner, in 2014 the Office has received more than 50 com-

number of complaints in 2015, with an additional increase in 2016.⁴⁷ This is another indicator of an increased awareness from citizens in exercising their rights and establishing trust in the work of institutions, thus creating a better environment for all citizens, in particular members of non-majority communities. However, regardless of these notable improvements, the implementation of the Law remains an issue that requires further engagement and dedication.⁴⁸ Further, non-adoption of the 'Strategy for Protection and Promotion of Language Rights'⁴⁹ by the Government and its postponement for approval in 2017 have led to delays in taking appropriate measures in several areas of concern.

Lastly, to ensure the participation of the minorities in the decision-making, at the central level, another mechanism is mandated to recommend measures on the use of languages, namely the Communities Consultative Council (hereinafter the Council). Established as advisory/consultative mechanism within the Office of the President, the Council is composed of all members of minorities living in Kosovo. This constitutionally established mechanism also issues recommendation to institutions on language matters, primarily through its working group on language. Nevertheless, the Council has not been able to address the language issues sufficiently whether at central or local level. The reasons for the low performance of the Council's main duties and responsibilities are manifold. The lack of awareness about the existence of this mechanism - as noted from the side of local communities' representatives and representatives from communities' organizations, as well as the lack of responses to its recommendations indicates that there is room for improvement in terms of increasing communication between

plaints only in the last six months of operation. For further details on the number of complaints and activities of the Office of Language Commissioner please see: *The Annual Report of the Office of Language Commissioner* for 2014 (p.24), available at: http://www.komisioneri-ks.org/repository/docs/ZKGJ_VERSIONI_ANGLISHT_2007.PDF; *Annual Report of the Office of Language Commissioner* for 2015. (p.36), available at: http://www.komisioneri-ks.org/repository/docs/Raport_vjetor_2015_140616.pdf; and *Annual Report of the Office of Language Commissioner* for 2016. (p.51);

⁴⁷ In 2016, the Office of Language Commissioner received 48 complaints, out of which 25 have been solved positively while 16 are in the process. This number does not refer to the number of the complaints received through the phone and other public complaints made by the citizens and institutions in public meetings.

⁴⁸ The opening remarks of Language Commissioner – Mr. Slavisa Mladenovic, in the presentation the 2016 Annual Report of the Office of Language Commissioner, available at: http://www.komisioneri-ks.org/repository/docs/Raport_Vjetor_per_vitin_2016_Godisnji_izvestaj_ZA_2016_GODINU.pdf

⁴⁹ For more information, please refer to Office of Language Commissioner 2016 Annual Report, p.38.

the Council, communities and institutions.⁵⁰ All these central and local level mechanisms established in Kosovo have a common objective – they directly or indirectly strive to ensure the implementation of the linguistic rights, regardless of the fact that their acting powers do differ in substance. Therefore, a meaningful coordination and cooperation among them is necessary to effectively implement legal and policy framework on languages in Kosovo. Furthermore, a proper oversight of the implementation of the legislation and policy and performance of all these mechanisms should be conducted from the Assembly of Kosovo, which at the current stage does not show a particular interest on this issue.

Conclusion

Language constitutes one of the essential elements of one's identity, and more specifically it is an integral part of person's cultural identity. Language enables groups and individuals to freely express themselves, gain full access to public services and allows their equal participation in public life. Kosovo has adopted an advanced domestic legal framework which incorporates enhanced provisions for the protection and promotion of linguistic rights. The constitutional provisions adopt the *principle of bilingualism* stipulating that the Albanian and Serbian languages are the official languages nation-wide. Simultaneously, the Constitution also enshrines the *principle of multilingualism*, ensuring that Turkish, Bosnian, and Romani languages are accorded the status of an official language at the municipal level.

Maintaining full official status for the Serbian and Albanian languages throughout Kosovo's territory has often caused additional resource implications. Although these may be feasible in highly developed countries with generous minority language policies, it might pose an additional burden for public administration and in particular for municipalities. Ensuring the respect of these linguistic rights, regardless of the low thresholds applied in terms of recognition of a community language, has contributed substantially in creation of higher trust in local and central state institutions and has increased incentives for participation of communities in public life.

Moreover, the establishment of the Office of Language Commissioner as a first institution of its kind in the Balkans, as well as other

50 Please see the OSCE report on '*Performance and Impact of the Consultative Council for Communities 2015 -2016*' (p. 10-14) available at: <http://www.osce.org/mission-in-kosovo/362846?download=true>

supportive mechanisms, serves as an additional indicator of increased awareness from citizens in exercising their rights and creating a better environment for all citizens where they can express and communicate freely in their own language. Regardless of the notable improvements and developments noted on the central and local level, the Law on Use of Languages still lacks proper implementation, better inter-institutional communication as well as higher political will to overcome the challenges encountered throughout Kosovo.

Uključenost manjina kroz institucionalno priznavanje jezičnih prava na Kosovu

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SAŽETAK: U kojoj mjeri dobro osmišljeno zakonodavstvo i politika, niski pragovi za priznavanje jezika i institucionalno uspostavljeni mehanizam usmjeren na promicanje i zaštitu jezičnih prava doprinose integraciji manjina u postkonfliktnim društvima? Jezik je osnovni element kulturnog identiteta, koji grupama i pojedincima omogućuje slobodno izražavanje, stjecanje punog pristupa javnim službama i ravnopravno sudjelovanje u javnom životu. Mnogo je dimenzija unutar kojih se jezik proučava u odnosu na integraciju, a ostvarivanje ovog temeljnog prava može se mjeriti u različitim područjima, poput obrazovanja, političkog sudjelovanja, zaštite kulturnog identiteta i pristupa uslugama itd. Sva su ta područja podjednako važna i treba ih uzeti u obzir pri izradi nacionalnog političkog okvira. U ovom članku objašnjava se pravni i politički okvir uspostavljen na Kosovu nakon 2000. godine, prikazuje primjena odredbi jezičnih prava na središnjoj i lokalnoj razini, obrazlažu koncepti službenih jezika i jezika u službenoj uporabi te pragovi koji se primjenjuju za priznavanje jezika. Pored toga, objašnjava se institucionalni mehanizmi namijenjeni zaštiti i promicanju jezičnih prava na Kosovu. Ova politika institucionalnog dizajna i mehanizmi koji su stvoreni na Kosovu jedinstveni su, kako na Balkanu, tako i općenito.

Konačno, zaključit ću procjenom jesu li primijenjeni zakonski i politički standardi pridonijeli integraciji manjina u javni život Kosova i njihove dugotrajne učinke u osiguravanju stabilnosti i sprječavanju napetosti između različitih manjina.

KLJUČNE RIJEČI: jezična prava, Kosovo, manjine, jezične politike, dvojezičnost, višejezičnost

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